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8   **UNITED STATES DISTRICT COURT**

9   **SOUTHERN DISTRICT OF CALIFORNIA**

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11   SEAN E. BRAZIL,   Civil No.   07-0082 L (RBB)

12   Petitioner,

13

14   v.

15   **ORDER REOPENING CASE AND**
      BEN CURRY, Warden, et al.,   **SETTING BRIEFING SCHEDULE**
16

17   Respondents.

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20   On January 11, 2007, Petitioner, proceeding pro se, submitted a Petition for Writ of

21   Habeas Corpus pursuant to 28 U.S.C. § 2254. In its January 22, 2007 Order, the Court dismissed

22   this case without prejudice because Petitioner failed to name a proper respondent. Petitioner was

23   instructed that to have this case reopened he had to file a First Amended Petition no later than

24   March 26, 2007. On February 5, 2007, Petitioner filed a First Amended Petition pursuant to this

25   Court's Order.

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07cv0082

1   Based on this Court's review of the First Amended Petition, the Court **ORDERS** that this

2   case be reopened. Further, in accordance with Rule 4 of the rules governing petitions for a writ

3   of habeas corpus pursuant to 28 U.S.C. § 2254, and upon a preliminary review of the First

4   Amended Petition, **IT IS ORDERED** that:

5   1.   The Clerk of this Court shall promptly (a) serve a copy of the Petition and a copy

6   of this Order on the Attorney General for the State of California, or his authorized agent; and

7   (b) serve a copy of this Order on Petitioner.

8   2.   If Respondent contends the Petition can be decided without the Court's reaching

9   the merits of Petitioner's claims (e.g., because Respondent contends Petitioner has failed to

10   exhaust any state remedies as to any ground for relief alleged in the Petition, or that the Petition

11   is barred by the statute of limitations, or that the Petition is subject to dismissal under Rule 9 of

12   the Rules Governing § 2254 Cases, or that all of the claims are procedurally defaulted, or that

13   Petitioner is not in custody), Respondent shall file a motion to dismiss pursuant to Rule 4 of the

14   Rules Governing § 2254 Cases no later than **May 29, 2007**. The motion to dismiss shall not

15   address the merits of Petitioner's claims, but rather shall address <u>all</u> grounds upon which

16   Respondent contends dismissal without reaching the merits of Petitioner's claims is warranted.[1]

17   At the time the motion to dismiss is filed, Respondent shall lodge with the Court all records

18   bearing on Respondent's contention in this regard. A hearing date is <u>not</u> required for the motion

19   to dismiss.

20   3.   If Respondent files a motion to dismiss, Petitioner shall file his opposition, if any,

21   to the motion no later than **June 28, 2007**. At the time the opposition is filed, Petitioner shall

22   lodge with the Court any records not lodged by Respondent which Petitioner believes may be

23   relevant to the Court's determination of the motion.

24   4.   Unless the Court orders otherwise, Respondent shall not file a reply to Petitioner's

25   opposition to a motion to dismiss. If the motion is denied, the Court will afford Respondent

26   adequate time to respond to Petitioner's claims on the merits.

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28   [1] If Respondent contends Petitioner has failed to exhaust any state remedies as to any ground for relief alleged in
     the Petition, the motion to dismiss shall also specify the state remedies still available to Petitioner.

1   5.   If Respondent does not contend that the Petition can be decided without the Court

2   reaching the merits of Petitioner's claims, Respondent shall file and serve an answer to the

3   Petition, as well as points and authorities in support of such answer, no later than **June 12, 2007**.

4   At the time the answer is filed, Respondent shall lodge with the Court all records bearing on the

5   merits of Petitioner's claims. The lodgments shall be accompanied by a notice of lodgment

6   which shall be captioned "**Notice of Lodgment in 28 U.S.C. § 2254 Habeas Corpus Case —**

7   **To Be Sent to Clerk's Office**." Respondent shall not combine separate pleadings, orders or

8   other items into a combined lodgment entry. Each item shall be numbered separately and

9   sequentially.

10   6.   Petitioner may file a traverse to matters raised in the answer no later than **July 12,**

11   **2007**. Any traverse by Petitioner (a) shall state whether Petitioner admits or denies each

12   allegation of fact contained in the answer; (b) shall be limited to facts or arguments responsive

13   to matters raised in the answer; and (c) shall not raise new grounds for relief that were not

14   asserted in the Petition. Grounds for relief withheld until the traverse will not be considered.

15   No traverse shall exceed ten (10) pages in length absent advance leave of Court for good cause

16   shown.

17   7.   A request by a party for an extension of time within which to file any of the

18   pleadings required by this Order should be made in advance of the due date of the pleading, and

19   the Court will grant such a request only upon a showing of good cause. Any such request shall

20   be accompanied by a declaration under penalty of perjury explaining why an extension of time

21   is necessary.

22   8.   Unless otherwise ordered by the Court, this case shall be deemed submitted on the

23   day following the date Petitioner's opposition to a motion to dismiss and/or his traverse is due.
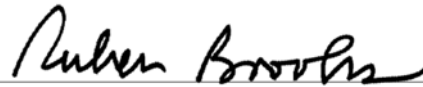
24   9.   Every document delivered to the Court must include a certificate of service

25   attesting that a copy of such document was served on opposing counsel (or on the opposing

26   party, if such party is not represented by counsel). Any document delivered to the Court without

27   a certificate of service will be returned to the submitting party and disregarded by the Court.

28   / / /

1   10.   Petitioner shall immediately notify the Court and counsel for Respondent of any

2 change of Petitioner's address. If Petitioner fails to keep the Court informed of where Petitioner

3 may be contacted, this action will be subject to dismissal for failure to prosecute.

4   **IT IS SO ORDERED.**

5 DATED: April 9, 2007

6   Ruben B. Brooks
   United States Magistrate Judge

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